

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL MISC.APPLICATION No. 4516 of 2005****For Approval and Signature:****HONOURABLE MR.JUSTICE K.A.PUJ**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

PRAFUL PRABHAKARBHAI HARSHE - Applicant(s)**Versus****THE STATE OF GUJARAT & 1 - Respondent(s)****Appearance :**

MR RAJESHWAR J DAVE for Applicant(s) : 1,
 MR HL JANI, APP for Respondent(s) : 1,
 RULE SERVED BY DS for Respondent(s) : 2,

CORAM : HONOURABLE MR.JUSTICE K.A.PUJ**Date : 16/09/2005****ORAL JUDGMENT**

1. The petitioner as a liquidator of Visnagar
 Nagarik Sahakari Bank Ltd., has filed this petition

under Section 482 of the Criminal Procedure Code, seeking declaration that the remarks and strictures passed by the learned Judge in para-13 of order dated 8.4.2005 passed below Criminal Misc. Application No.1133/2005 in so far as it relates to petitioner are wrong, illegal, unwarranted, uncalled for and further prayed to expunge the same.

2. This Court has issued rule on 25.4.2005 and after hearing Mr.Rajeshwar J. Dave, learned advocate for the petitioner and learned APP, the Court passed an order staying operation of the order dated 8.4.2005 qua the observations made against the petitioner and more particularly in para-13 of the order, till the returnable date. The said interim relief was continued thereafter.

3. Mr.Rajeshwar Dave, learned advocate appearing for the petitioner has submitted that the petitioner was appointed as Liquidator of the Visnagar Nagrik Sahakari Bank Ltd., on 1.8.2002. Upon scrutiny of

the records of the Bank the petitioner found that there was mismanagement and large scale irregularities were committed by the earlier management of the Bank and therefore, he has directed the Manager of the Bank to lodge a complaint against the earlier management of the Bank and accordingly, complaint bearing CR No.452/2002 was filed on 30.8.2002. He has further submitted that one of the persons against whom the Bank has lodged complaint was Mr.Mansukh V. Pethani and Mr.Rasik V. Pethani who had preferred Criminal Misc. Application No.2308/2003 and 2307/2003 respectively and both the said applications were allowed and they were enlarged on bail by the City Sessions Court, Ahmedabad, on condition that they shall pay the principal amount in 24 monthly installments. He has further submitted that as per the said order they have also handed over post dated cheques but after the initial payment the cheques issued by them were returned dishonoured. The petitioner, therefore, had informed the ACP "E" Division to initiate

appropriate action for cancellation of their bail.

4. Mr.Dave further submitted that the said persons were arrested in connection with the complaint bearing CR No.199/2005 lodged by an individual for various offences. They have therefore preferred Criminal Misc. Application No.1133/2005 which came up for hearing on 8.4.2005 before the learned Additional City Sessions Judge, Ahmedabad. During the course of arguments, the learned APP pointed out to the learned Judge that the said persons were also defaulters in Complaint No.452/2002 and had not complied with the undertaking given by them for their enlargement of bail. The learned Judge, therefore, while rejecting the said bail application observed in para-13 of the order that "It may be presumed that this is due to consent, connivance or negligence on the part of the Liquidator of the Visnagar Bank. He has further observed that it is necessary to send copies of this order to the Additional Secretary, Co operation Department and Registrar, Co-operative

Societies to take appropriate action in the matter in the interest of depositors.”

5. Mr.Dave further submitted that the aforesaid observations are made under presumption and that the same is a clear abuse of process of Court and are uncalled for and unwarranted. He has further submitted that the learned Judge could have conveniently avoided the said observations while deciding the application independently. He has further submitted that by observing so, the learned Judge has also not followed the principles of natural justice and judicial norms and also disregarded the well settled principles of law. He has further submitted that the said observation will affect the spotless career of the petitioner for no fault on his part. He has, therefore, submitted that the petitioner has approached this Court by way of this petition for expunging the said remarks / strictures passed by the learned Additional City Sessions Judge, Ahmedabad against the present petitioner.

6. In support of his submissions Mr.Dave relied on the decision of this Court in the case of **State vs. N.C.Jani, reported in 1978 CRI.L.J. 1340(All.)**, wherein it is held that While discharging his judicial functions, including the pronouncement of judgment, a Judge enjoys statutory protection. He is not expected to abuse that protection by expressing therein his own views on such extraneous matters which are likely to spark off confrontation with other departments, or criticism by the public. It is also held therein while expunction of the concerned paragraphs that the judgment was not the proper medium for giving vent to his feelings, and that too in such a bitter and sweeping style, in his judgment which was expected to be confined only to the facts of the cases which were being disposed of through it.

7.Mr.Dave relied on another decision in the case of **Panchanan Parida vs. Sub Divisional Judicial Magistrate, Balasore**, reported in 1991 CRI.L.J.3037

(Ori.), wherein it is held that the cardinal rule of administration of justice is that freedom and independence of Judges and Magistrates must be maintained and they must be allowed to perform their functions freely and fearlessly and without undue interference by anybody, even the higher courts. At the same time, it must be borne in mind that in expressing their opinion, the Judges and Magistrates must be guided by considerations of justice, fairplay and restraint and the remarks shall not lack judicial poise, moderation and sobriety. Any stricture by a Judge or a Magistrate in their judgments against any person or authority must satisfy three test; Firstly, the person or authority whose conduct is in question is before the Court or has an opportunity of explaining or defending himself' secondly, there is evidence on record bearing on what conduct justifying the remarks; and thirdly, it is necessary for the decision of the case as an integral part thereof to animadvert on that conduct. Thus, uncalled for, undeserving, unjustified or unnecessarily

derogatory or disparaging remarks should be avoided by Judges and Magistrates.

8. Mr.Dave has further relied on the decision of Hon'ble supreme Court in the case of Anjani K. Verma vs. State of Bihar & Anr., reported in (2004)11 Supreme Court Cases 188, wherein it is held that, A judicial officer who exceeds the limits of propriety and conduct and does not render justice in accordance with the facts of the case and the law, needs no protection from the superior Courts. But, at the same time, while passing strictures against a member of the subordinate judiciary utmost care and caution is required to be taken, also having regard to the stress and conditions under which, by and large, the judicial officers have to render justice.

9. Lastly Mr.Dave relied on the decision of the Hon'ble Supreme Court in the case of Teesta Setalvad & Anr., vs. State of Gujarat & Ors., reported in 2004(2) GLR 1582, wherein it is held

that observations should not be made by Courts against persons and authorities, unless they are essential or necessary for decision of the case. Rare should be the occasion and necessities alone should call for its resort. The Court therefore issued the directions that the observations of the High Court, against the appellants quoted above shall stand expunged and deleted from the judgment of the High Court, and consequently, must be treated as having never existed or being part of the High Court judgment.

10. Mr.H.L.Jani, learned APP appearing for the respondent – State on the other hand supported the order passed by the learned Additional city Sessions Judge, Ahmedabad.

11. After having heard the learned advocate for the petitioner and the learned APP for the State and after having gone through the impugned order passed by the learned Additional City Sessions Judge, Ahmadabad, the Court is of the view that though the

Bank in question was indulged in the various illegalities and irregularities and Directors and Officers were alleged have been involved to some extent and have caused damage to the Bank, at the same time, the entire burden could not be thrown on the Liquidator. It is also not just and proper. It is true that on return of the cheques strong actions are required to be taken by the Liquidator against the defaulters. He has simply informed the ACP for taking appropriate action. He has, however, not moved any application for cancellation of bail nor filed any complaint under Section 138 of the Negotiable Instrument Act, when the cheques were dishonoured. However, as against this, the explanation tendered before the Court was that in none of the cases, any such application was ever filed. He has simply informed the investigating agency for taking appropriate action in the matter. Moreover, in this particular case after the cheques were bounced. Firstly, the Bank has recovered an amount of Rs.1,71,00,000/- upto 17.8.2005 and again on 18.8.2005 an amount of Rs.30,00,000/- was

recovered. One property situated at C.G.Road is attached by the Bank and put in auction. The same is under progress. In this view of the matter, criminal complaint under Section 138 was not filed by the Bank against the said accused.

12.Considering the above aspects of the matter and decided case law on the subject, the Court is of the view that the following observations made by the learned Sessions Judge in his order are required to be expunged. "It may be presumed that this is due to consent, connivance or negligence on the part of the Liquidator of the Visnagar Bank. It is necessary to send copies of this order to the Additional Secretary, Co operation Department and Registrar, Co-operative Societies to take appropriate action in the matter in the interest of depositors."

13. While expunging the above observations from the impugned order, the Court makes it clear that on the basis of these observations only no action can

be taken against petitioner. However, taking overall view of the matter and considering the entire facts of the case, if the concerned authority takes any action, the expunction of the observations would not come in the way of such authority.

14. With these directions and observation this petition is allowed to the aforesaid extent. Rule is made absolute to the aforesaid extent.

kks

(K.A. PUJ, J.)